

**IN THE UNITED STATES COURT OF APPEALS
FOR THE FEDERAL CIRCUIT**

MATTHEW CHRISTENSEN,)
KATHERINE KAES CHRISTENSEN,)
)
Plaintiffs-Appellees)
) No. 2024-1284
v.)
)
UNITED STATES,)
)
Defendant-Appellant)

**UNOPPOSED MOTION FOR A 60-DAY EXTENSION OF TIME
IN WHICH TO FILE APPELLANT'S OPENING BRIEF**

The United States respectfully requests a 60-day extension of time, from February 20 until April 22, 2024,¹ within which to file its opening brief. This is the United States' first request for an extension for this purpose. Counsel for the appellees has indicated that he does not oppose this motion. As good cause for granting this motion, counsel states as follows:

1. This federal tax case involves an important issue of first impression in any U.S. Court of Appeals regarding whether the U.S. Court of Federal Claims erred in ruling that Article 24(2)(b) of the

¹ April 20, 2024, which is 60 days after the current due date, is a Saturday.

income tax treaty between the United States and France authorizes an independent treaty-based foreign tax credit that is not subject to the provisions or limitations of the Internal Revenue Code.

2. Although the United States timely filed a notice of appeal as a protective measure, the Solicitor General of the United States has not yet conducted her review of the case and made a decision whether to authorize the appeal. Authorization of the Solicitor General is required for the United States to take an appeal. 28 C.F.R. Part O, Subpart D, § 0.20(b). If authorization is denied, the United States will voluntarily dismiss this appeal. Alternatively, if authorization is given, it will be necessary to take into account the Solicitor General's views in drafting the United States' brief.

3. In addition to preparing the Government's brief in this case if appeal is authorized, I am responsible for preparing the Commissioner of Internal Revenue's brief in *Bibeau v. Commissioner*, No. 23-2923 (8th Cir.), which is due on February 16, 2024. I am also scheduled to present oral arguments on behalf of the Government in *Harper v. Werfel*, No. 23-1565 (1st Cir.), on March 4, 2024, and in

Iowaska Church of Healing v. Werfel, No. 23-5122 (D.C. Cir.), on March 11, 2024.

4. In addition, I was not involved in the proceedings below, and additional time is required for me to familiarize myself with the issues and the record on appeal before preparing a draft of the Government's brief. In accordance with the standard procedures of our office, the Government's brief must then be reviewed by a supervisory attorney in the Appellate Section and by the IRS Office of Chief Counsel prior to filing. Additional time is needed to allow those individuals to complete their review.

5. In light of the above circumstances, the Government submits that a 60-day extension is necessary to provide adequate time for the Solicitor General to decide whether to authorize this government appeal and for me to prepare a brief that will be of maximum assistance to the Court, to have it reviewed by the appropriate supervisory officials and the IRS, and to have the brief copied and filed with the Court.

6. I have contacted Stuart E. Horwich, counsel for the appellees, who has stated that he does not oppose this motion.

WHEREFORE, the United States respectfully requests that the Court grant this motion for a 60-day extension of time, until April 22, 2024, to file its opening brief.

Respectfully submitted,

/s/ Kathleen E. Lyon

KATHLEEN E. LYON

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DECLARATION

Kathleen E. Lyon, of the Department of Justice, Tax Division, Appellate Section, Washington, D.C., states as follows:

I am the attorney responsible for drafting the United States' opening brief in this case. The facts in support of, and the reasons for, the United States' request for a 60-day extension of time to file its opening brief are true and correct to the best of my knowledge.

I declare under penalty of perjury, pursuant to 28 U.S.C. § 1746, that the foregoing is true and correct. Executed this 7th day of February, 2024, in Washington, D.C.

/s/ Kathleen E. Lyon
KATHLEEN E. LYON
Attorney

CERTIFICATE OF COMPLIANCE

With Type-Volume Limitation, Typeface Requirements, and
Type-Style Requirements

Case No. 2024-1284

1. This document complies with the word limit of Fed. R. App. P. 27(d)(2)(A) because:

this document contains 538 words, excluding accompanying documents authorized by Fed. R. App. P. 27(a)(2)(B), or

this brief uses a monospaced typeface and contains *[state the number of]* lines of text, excluding the parts of the brief exempted by Fed. R. App. P. 32(a)(7)(B)(iii).

2. This document complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6), which are incorporated by Fed. R. App. P. 27(d)(1)(E), because:

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(s) /s/ Kathleen E. Lyon

Attorney for the United States

Dated: February 7, 2024

CERTIFICATE OF SERVICE

I certify that, on this 7th day of February, 2024, I electronically filed the foregoing with the Clerk of the Court using the appellate CM/ECF system. I further certify that counsel for all participants in this case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

/s/ Kathleen E. Lyon
KATHLEEN E. LYON
Attorney